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OFFICE OF JUDGE
GLEN E. CLARK

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

IN RE:

SIMON TRANSPORTATION SERVICES,
INC. and DICK SIMON TRUCKING, INC.

Debtors.

Bankruptcy Case No.
02-22906 GEC

Chapter 11

[Jointly Administered]

Judge Glen E. Clark

**JOINT MOTION AND STIPULATION FOR AUTHORITY
TO EXPLORE SETTLEMENT**

Pursuant to 11 USC § 105 and Rule 9013 of the Federal Rules of Bankruptcy Procedure, Freightliner LLC and Freightliner Market Development Company (collectively "**Freightliner**") and Central Refrigerated Service, Inc. ("**Central**") hereby move this Court for an Order delaying the entry of an order reflecting the Court's ruling of October 21, 2002, and authorizing Freightliner and Central (collectively "**F&C**"), together with the Unsecured Creditor's



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Committee (“**Committee**”) and its counsel, to engage in settlement discussions. The purpose of such discussions is to craft a solution, subject to Court approval after notice and hearing, that avoids the delay, cost and risk associated with appeals and or motions to alter or amend the findings, conclusions and rulings of October 21, 2002. In support of this joint motion and stipulation, F&C represent as follows:

1. F&C acknowledge that the Court has directed that an auction of the “trade-back agreements” occur, at which the Court anticipates that Freightliner and Central will bid against one another. As such, no discussions relating to settlement have occurred, and the discussion about an alternative resolution process which led to this Motion only occurred with the presence and participation of counsel for the Committee.

2. At the hearing on October 21, 2002 on the Debtor’s Supplemental Motion to Assume and Assign, F&C and the Debtor were prepared to present evidence that would allow the Court to make findings of fact and conclusions of law different than those made at the beginning of the hearing.

3. The Court’s ruling on these issues has such serious implications to both Freightliner and Central that an appeal, either before or after formal relief is sought from this Court, is likely. It is also uncertain, at this time, if an auction will result in significant proceeds to the Estate.

4. F&C believe that a better result for all, including the Estate, may be achieved by avoiding the unpredictable results arising from appeals and by reaching a negotiated settlement. If F&C, together with the Estate, are permitted to explore settlement and an agreement is reached,

such agreement would have no force or effect until, after proper notice and hearing, the Court is satisfied that the agreement is in the best interest of the Estate

5. Appeals will insert both delay and expense in the process of liquidating and closing this Estate. In addition, there are various issues and/or disputes between the Estate and Central which will result in the further use of resources. The delay, cost and uncertainty of the appeal process compromises Central's ability to absorb any such expense.

6. F&C have not identified a specific cost or risk arising from a brief delay in the entry of the Court's Order relative to the October 21, 2002 ("**Order**") hearing. Correspondingly, unless a negotiated solution is explored there is no way to determine whether the auction and appeal will yield better results for anyone.

7. In view of the foregoing, the F&C seek permission from the Court to explore a negotiated settlement between themselves and the Committee, and to defer the entry of the proposed Order until November ²⁷~~25~~, 2002, so that they are not distracted by the appeal process. F&C agree that, at any time during such period, either one of them or the Committee can cease discussions and ask the Court to enter the proposed Order in the ordinary course. In the event an agreement is reached among F&C and the Committee on or before November 26, 2002, F&C will so advise the Court and seek additional time to provide appropriate notice and hold a hearing at which F&C will present the same to the Court in a manner which addresses the findings and conclusions contained in the Court's Ruling.

WHEREFORE, Freightliner and Central respectively move this Court for an Order authorizing them to explore settlement with the Committee and to delay the entry of the proposed Order until November 26, 2002.

RESPECTFULLY SUBMITTED, this ^{15th}~~24th~~ day of November, 2002.

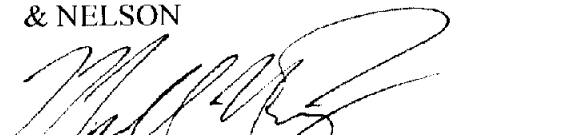
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was sent by telefax and/or e-mail on this ____ day of November, 2002, to the following:

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